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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,551

02/19/2004

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5149

27777

7590

02/21/2006

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EXAMINER

HESS, DOUGLAS A

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,551

Applicant(s)

SOWDEN ET AL.

Examiner

Douglas A. Hess

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3, 4, 6, 9, 14, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 3 and 4, (which depend from claim 1, wherein the preamble discusses transferring “dosage forms”), the use of a first substrate and a second substrate is confusing.

Claim 6 refers to a substrate as well, see above sentence.

In claim 9, line 2, the term “rotatable” is confusing. It appears it should be --rotatable--.

Claim 14 recites the limitation "said substrate so that said substrates" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second substrates which are used in the claims must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Cvacho USP 3563170. Cvacho discloses a similar device comprising a(n):

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- Flexible conveyor (fig. 21)
- Plurality of transfer units (140) that rotate while they are moved
- Cam track (172)
- Means for driving said conveying means (151, 152)
- Cam followers (fig. 21) that ride in said cam track (172)
- Drive pulley (151 or 152) and idler pulley (151 or 152)

Vacuum Means (170).

6. Claims 1, 2, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander USP 3330400. Alexander discloses a similar device comprising a(n):

- Flexible conveyor (fig. 21)
- Plurality of transfer units (27) that rotate while they are moved
- Cam track (46, 48)
- Means for driving said conveying means (inherent)
- Cam followers (44) that ride in said cam track (46, 48)
- Drive pulley (22 or 23) and idler pulley (22 or 23)
- Rotatable arm (43) linked to said transfer units (27)

7. Claims 1-5, 7, and 9-20 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVos USP 6234300. DeVos discloses a similar device comprising a(n):

- Flexible conveyor (12)

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- Plurality of transfer units (17) that rotate while they are moved
- Cam track (28)
- Means for driving said conveying means (inherent)
- Cam followers (29) that ride in said cam track (28)
- Drive pulley (fig. 1) and idler pulley (fig. 1)
- First and second retainers (31) made of an elastomeric material
- Rotateable actuator arm & plunger shafts (fig. 3-5) linked to transfer units

SEE DeVos FIGURE 5 FOR A FIRST AND SECOND RETAINER. (MULTIPLE PAIRS OF RETAINERS 56 CAPABLE OF HANDLING multiple articles.

8. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of US Patent 6742646. Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ in obvious variations of breadth and scope.

Conclusion

9. Applicant's arguments filed 12/12/05 have been fully considered but they are not persuasive. The mere addition of "one retainer having a shape that frictionally engages" does not provide a patentable departure. Any gripper or holder that makes contact with and article it holds is frictionally engaged and thereby the shape is for frictionally engaging, no matter what the shape.

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Regarding the functional recitation regarding dosage or substrate, since these terms are merely functionally recited, and not claimed in combination with the device, any of the cited prior art is capable of supporting a generic dosage or substrate as claimed.

Regarding a transfer unit with a first and second retainer, Figure 5 of DeVos et al. where he discloses 3 different retainers (56) on one transfer device 57.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

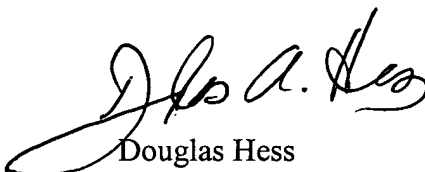
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas Hess whose telephone number is (571) 272-6915. The examiner can normally be reached on Mon-Thur 5:30 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas Hess
Primary Examiner
Art Unit 3651
2/16/06

DAH
February 16, 2006